

***United States Court of Appeals
for the Second Circuit***



**SUPPLEMENTAL
APPENDIX**

ORIGINAL

77-6033

United States Court of Appeals
FOR THE SECOND CIRCUIT

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Plaintiff-Appellee,

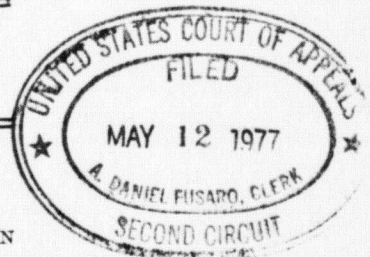
—v.—

AMERICAN EXPRESS COMPANY,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANT'S SUPPLEMENTAL APPENDIX

PROSKAUER ROSE GOETZ & MENDELSON
Attorneys for Defendant-Appellant
300 Park Avenue
New York, New York 10022
(212) 593-9000



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1
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

-against-

AMERICAN EXPRESS COMPANY,

Defendant.
-----X

: 76 Civ. 365 (GLG)

: NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the annexed affidavit of Morton M. Maneker, sworn to July 20, 1976, the exhibits thereto, and defendant's reply memorandum on its motion to dismiss the complaint, the undersigned will move this Court before Hon. Gerard L. Goettel, U.S.D.J., in Courtroom 506 of the United States Courthouse, Foley Square, New York, New York, at 10:00 a.m. on Monday, August 2, 1976, or as soon thereafter as counsel can be heard, for an order striking Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss, the Appendices thereto and the affidavit of Judith Harris verified June 29, 1976, upon the ground that they divulge the prior conciliation and settlement procedures herein, in violation of Section 706(b) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-5(b) (Supp. II, 1972), and for such other and further relief as the Court may deem appropriate.

Dated: New York, New York
July 20, 1976.

PROSKAUER ROSE GOETZ & MENDELSON

By

Morton M. Maneker
Morton M. Maneker

A Member of the Firm

Attorneys for Defendant
300 Park Avenue
New York, New York 10022
Tel. (212) 593-9900

BEST COPY AVAILABLE

TO:

DELORES WILSON, Esq.
Attorney for Plaintiff
Philadelphia Regional
Litigation Center
127 North 4th Street, Suite 200
Philadelphia, Pennsylvania 19106

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

-against-

AMERICAN EXPRESS COMPANY,

Defendant.

76 Civ. 365 (GLG)

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

MORTON M. MANEKER, being duly sworn, deposes and
says:

1. I am a member of the firm of Proskauer Rose Goetz & Mendelsohn, attorneys for defendant American Express Company. I make this affidavit in support of defendant's motion to strike plaintiff's memorandum in opposition, the appendices thereto, and the affidavit of Judith Harris verified June 29, 1976, and in further support of defendant's motion to dismiss the complaint. I conducted most of the negotiations arising out of the Ferrell and Seese charges which defendant conducted with the EEOC and which are disclosed by the EEOC in the Harris affidavit and the memorandum and appendices.

2. The papers in opposition should be stricken because the entirety of the Harris affidavit, and numerous references throughout the memorandum and appendices, divulge the conciliation and settlement procedures which were undertaken by the EEOC and defendant herein, in violation of an

explicit criminal prohibition of Title VII. Section 706(b) of Title VII prohibits the EEOC, its officers and employees from divulging, "without the written consent of the persons concerned," anything "said or done during and as a part of" its informal endeavors to eliminate alleged discrimination by "informal methods of conference, conciliation and persuasion." The statute also provides that "any person who makes public information in violation of this subsection" is guilty of a crime. 42 U.S.C. §2000e - 5(b).

3. The EEOC's disclosures in its papers of the settlement negotiations are intended to show that its extraordinary delays in bringing suit are somehow attributable to the actions or "approval" of defendant. The EEOC's descriptions of the negotiations are materially inaccurate and incomplete, as well as in violation of the statute. If the EEOC's papers are not stricken, therefore, the following is submitted in response thereto and in further support of defendant's motion to dismiss, with the request that this affidavit be maintained under seal unless the motion to strike is denied.

4. The delay of almost five years between the filing of the Ferrell charge in 1971 and the commencement of this action in 1976 is the responsibility not of defendant, as the EEOC would have this Court believe, but solely of the EEOC, its officers and attorneys. After more than two years of delay, the EEOC initiated further delays in 1974 by inviting defendant "to discuss the possibility of a voluntary resolution."* The EEOC then took two additional years to

* See letter from Delores Wilson, EEOC Regional Attorney, dated January 15, 1974 (plaintiff's Appendix 3).

negotiate settlements with defendant which it then rejected. As shown below, the EEOC officials in Washington, D.C. with authority to enter into a binding settlement with defendant refused to approve not one, but two consent decrees executed by defendant and approved by the EEOC trial attorneys in the Philadelphia Regional Litigation Center after painstaking negotiations. Moreover, defendant repeatedly advised the EEOC, throughout the negotiations, of its position that the EEOC was barred by its own delays and by the existence of Ferrell's private action from bringing suit.

5. Although Clarence Ferrell filed his charge with the EEOC in June, 1971, and Mary Reese filed her charge in March, 1972, it was not until January, 1974, that the EEOC invited defendant to enter into the settlement discussions which are divulged and described in the EEOC's motion papers. Thus, it was over two years and almost two years, respectively, before the EEOC commenced the negotiations now claimed as the excuse for its delays in filing suit. Thereafter the negotiations were extended over a two-year period almost totally as the result of the EEOC's delays and inconsistencies. The failure of the negotiations to result in a settlement was the exclusive responsibility of the EEOC, which allowed its attorneys in Philadelphia to negotiate two settlements with defendant without authority to bind the Commission, and then rejected the agreements reached.

6. After defendant's receipt of a letter from the EEOC Regional Attorney in Philadelphia on January 15, 1974, a meeting between the EEOC and defendant's representatives and attorneys was held at Proskauer Rose Goetz & Mendelsohn in New York City on February 12, 1974. Documentary informa-

tion which the EEOC had requested was submitted to its attorneys at that meeting, and the possibilities of settlement were explored and discussed. A second meeting as held at the Proskauer offices on March 25, 1974, and a third meeting was held there on June 20, 1974. Prior to the meeting of June 20, 1974, defendant submitted additional statistical and other employment information to the EEOC in accordance with its requests, and on June 10, 1974 defendant forwarded a proposed conciliation agreement to the EEOC. (Copies of the conciliation agreement and my transmittal letter to Assistant Regional Attorney Harris are annexed hereto as defendant's Exhibit 1.)

7. The EEOC responded by letter dated July 17, 1974 enclosing a proposed "Agreement and Consent Decree" which attorney Harris assured me that the Philadelphia Regional Litigation Center was "prepared to recommend to the office of the General Counsel in Washington as an acceptable resolution of this matter." (A copy of Ms. Harris' letter dated July 17, 1974 is annexed as Exhibit 2.)

8. Within a short time thereafter, there was substantial agreement on the basic provisions of a settlement. There was disagreement, however, as to whether the settlement should take the form of a conciliation agreement or a consent decree. The EEOC General Counsel's office in Washington, D.C. insisted in a letter dated October 22, 1974 (Exhibit 3) that only a consent decree would be acceptable. Defendant, believing that the controversy had been resolved as a result of the negotiations, reluctantly agreed to sign a consent decree rather than a conciliation agreement so as to facilitate a final and complete settlement.

9. After additional extensive negotiations as to the precise terms of the settlement, a 14-page consent decree (Exhibit 4) was executed by a senior vice-president of American Express and sent to the EEOC on January 20, 1975. This settlement had been negotiated with, and approved by, the trial attorneys for the EEOC in its Philadelphia Regional Litigation Center. If approved by the EEOC in Washington, the settlement would have gone into effect April 1, 1975. Defendant undertook in the consent decree to establish an affirmative action program for the recruitment and hiring of minorities for managerial and professional positions, standards and procedural safeguards with respect to discharges for absenteeism (including reports to the EEOC and judicial review of contested cases), limitations on the use of arrest records, garnishments and high school diplomas in making employment and other personnel decisions, provisions with respect to maternity leaves and benefits, and procedures to establish compliance with the settlement agreements.

10. In May, 1975, after a delay by the EEOC of four months, defendant was informed that the consent decree, which had been so carefully negotiated for a year with the EEOC's Philadelphia office, had been found "unacceptable" by the EEOC General Counsel's office in Washington. In a letter dated May 13, 1975 (Exhibit 5), attorney Harris summarized Washington's belated objections to the settlement and stated that the EEOC wished to know "whether we can settle on the outline set forth above [by Washington] or whether we will have to proceed to litigate this matter." Negotiations were resumed and resulted in a second consent decree (Exhibit 6), which was approved by the EEOC Philadelphia attorneys and executed by defendant's senior vice-president on June 10, 1975.

11. On September 2, 1975, three months after the second decree had been signed by defendant, the Philadelphia attorneys informed defendant that Washington had also rejected this second settlement. On several occasions, I asked the EEOC to allow officials who had authority to bind the Commission to negotiate with defendant. This request was repeatedly refused by the EEOC. Defendant's efforts to work out still a third settlement were in progress when this action was filed by the EEOC in January, 1976, 4 1/2 months after the second consent decree had been rejected by the EEOC in Washington.

12. To this extraordinary example of EEOC "dalliance" for a period of almost five years must be added its unexplained failure to serve defendant with the summons and complaint for an additional 2 1/2 months, until April 9, 1976.

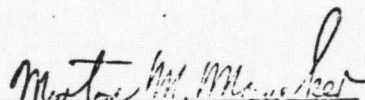
13. The EEOC's attempt to foist the responsibility for its own inordinate delays upon defendant, is wholly groundless. The only time period for which the EEOC even attempts to offer any excuse is the two years between January, 1974 and January, 1976. As shown above, the EEOC was solely responsible for its own decision to initiate further conciliation efforts in January, 1974, to carry on negotiations through attorneys without authority to bind the Commission, to refuse to negotiate through higher-level officials with such authority despite defendant's repeated requests, and then to reject two settlement agreements recommended by its own designated negotiators. The sole conduct with which defendant can be charged is accepting the EEOC's proposal to engage in further conciliation efforts and then agreeing to

two settlements negotiated with it.

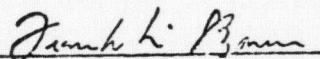
14. It is baseless for the EEOC to argue that defendant, by participating in settlement efforts proposed by the EEOC, somehow acquiesced in the use of stale charges (the principal charge having also been litigated and settled) for the assertion of claims by the EEOC with respect to a time period which would otherwise be barred. On the contrary, I repeatedly and expressly informed the EEOC during the negotiations that its scheme to use the Ferrell charge to go back many years beyond the statute of limitations could not be sustained because it had issued a right-to-sue letter to Ferrell and he had instituted his own private action.

15. There was no rush to settle with Ferrell to bar EEOC intervention, as the EEOC now claims. The Ferrell case was not settled until March, 1975, well over a year after the commencement of the EEOC negotiations. The EEOC thus had more than enough time to intervene if it wished to prevent a settlement which it believed would not adequately dispose of the Ferrell charges and related matters disclosed by the EEOC's investigation of the charges. I repeatedly informed the EEOC that its failure to intervene, and its inordinate delay in processing both the Ferrell and the Reese charges, were fatal defects in its attempts to go back to 1969 and beyond in asserting claims against defendant. I informed the EEOC trial attorneys on several occasions that they could bring suit only if they had evidence of discrimination in reasonably current employment practices of defendant and then, only on a charge filed by a commissioner or private party which was not barred by prior litigation or the passage of time.

16. Contrary to the repeated statements in the EEOC papers that it has obtained, during the two-year period of negotiations, evidence of current violations by defendant, the EEOC trial attorneys also advised me, as late as the first round of negotiations in late 1975 and early 1976, that they were convinced on the basis of the statistical and other information provided by American Express in response to their requests, that defendant's basic hiring and promotion practices are non-discriminatory. The EEOC trial attorneys stated that they therefore believed a third agreement could be negotiated, which would be approved by their superiors in Washington.


Morton M. Maneker

Sworn to before me this
20th day of July, 1976.



FRANKLIN S. BOUCH
Notary Public, State of New York
No. 116020000
Qualified in New York County
Commission Expires March 31, 1977

593-9426

CABLE ROUTE
TELEX: ITT 42070
WT 125352

Judith E. Harris, Esq.
Equal Employment Opportunity Commission
401 North Broad Street - Suite 1061
Philadelphia, Pennsylvania 19107

Re: American Express Company

Dear Judith

I am sending you herewith a draft of a Conciliation Agreement which we can discuss when you have had an opportunity to review it.

Sincerely yours,

MORTON M. MANEKER

Morton H. Mencher

WMA:jcl
Enclosure

AGREEMENT made this day of , 1974,
by and between the Equal Employment Opportunity Commission
(the "Commission") and American Express Company ("American
Express").

WHEREAS, the Commission has investigated charges
filed under Title VII of the Civil Rights Act of 1964, as
amended, (hereinafter "Title VII") in two proceedings en-
titled Clarence Ferrell v. American Express Co. YNY 3-040
and Mary A. Reese v. American Express Co., YDC 3-275, and
has found reasonable cause to believe that Title VII was
violated in certain respects,

WHEREAS, American Express denies that it is now
or has ever engaged in violations of Title VII but has
expressed a willingness to conciliate these charges, and

WHEREAS, American Express and the Commission seek
to avoid litigation upon terms which are equitable and fair
to all concerned,

NOW, THEREFORE, in consideration of the mutual
covenants herein expressed, the parties hereto agree as
follows:

1. American Express shall appoint a representative
who shall have responsibility for the reporting of information
to the Commission as required by this agreement.

2. The Commission shall appoint a representative
who shall monitor the undertakings of American Express set
forth in this agreement.

3. This Agreement shall apply only to the facilities of the Card Division of American Express in New York City.

4. American Express will continue its policy against discrimination of any kind because of race, sex or national origin in violation of Title VII.

Absence Control Policies

5. American Express will adopt and implement the Absence Control Plan attached hereto as Exhibit A. American Express will continue to administer its absence control policies without regard to race or national origin.

Recruitment and Hiring

6. American Express will continue to recruit and hire employees without discrimination on the basis of race, sex or national origin in violation of Title VII.

7. American Express will adopt and implement the Program for Increased Utilization of Minorities and Women in Higher Level Jobs attached hereto as Exhibit B.

Miscellaneous

8. American Express will not systematically or routinely inquire about past or present garnishments against job applicants.

9. American Express will not systematically or routinely inquire about arrest records of job applicants.

10. American Express will review all available records of employment applications and will reconsider, for

future job openings, applicants, if any, who would have been hired but for their arrest records or garnishments.

11. American Express will notify the Commission within thirty days after the discharge of an employee or the rejection of an applicant because of past or present garnishments or arrests.

Duration and Modification

12. American Express may modify the Absence Control Plan and/or the Program for Increased Utilization of Minorities and Women in Higher Level Jobs provided it notifies the Commission of any such modification during the term of this Agreement at least thirty days prior thereto. Should the Commission oppose the modification, it shall confer with the Card Division in an effort to resolve their differences. If such efforts fail, the Commission may cancel this Agreement by serving a Notice of Cancellation upon the Card Division. In the event of such cancellation, both parties shall have all rights, remedies and defenses available to them on the date of its execution.

13. The Commission accepts this agreement as a fair and equitable settlement of all claims with respect to the acts or practices described in the findings of probable cause in the two proceedings referred to above and will not commence or intervene in any suit against American Express on any such act or practice occurring prior to the expiration date of this Agreement provided that the Commission retains the right to seek individual relief for persons who may have filed or who may in the future file charges with respect to

14. All the foregoing provisions of this Agreement shall remain in effect for a period of two years from the date of its execution.

Confidentiality

15. The Commission, its members and employees shall keep this Agreement confidential and shall disclose it or its contents only to other members or employees of the Commission.

Non-Admission

16. The execution of this Agreement shall not be deemed an admission by American Express that it has violated any law.

AMERICAN EXPRESS COMPANY

By _____

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

By _____

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
PHILADELPHIA REGIONAL LITIGATION CENTER
401 N. BROAD STREET
PHILADELPHIA, PENNSYLVANIA 19108

July 17, 1974

Morton M. Maneker, Esquire
Proskauer Rose Goetz & Mendelsohn
300 Park Avenue
New York, N.Y. 10022

Re: American Express Company

Dear Mort:

As promised in our meeting of June 20, 1974, attached hereto are two copies of a proposed Agreement and Consent Decree which we are prepared to recommend to the Office of the General Counsel in Washington as an acceptable resolution of this matter. Accompanying the Decree are Exhibits A and B. Exhibit A contains a list of minority and female recruitment sources as well as a list of minority and female colleges. Exhibit B is the Company's proposed "Absence Control Policy" with our suggested modifications in brackets.

The Agreement covers the issues raised by both the Ferrell and Reese charges. In summary, its significant features provide for the ongoing acceptance of applications from female applicants for positions in the EEO-1 categories of Officials and Managers and Professionals, and for minority applicants for all positions with the Company. Additionally, the Agreement provides for goals for filling of Officials and Managers and Professional positions with Black and minority persons. The Agreement further requires reporting of certain information concerning these positions on a quarterly basis. Further provisions concerning garnishment, arrest and maternity leave have been included in the Agreement.

After you had ample time to consider the Agreement, I would appreciate your giving me a call so that we can discuss it. I look forward to hearing from you.

Sincerely,

Judith E. Harris
Assistant Regional Attorney

Attachments

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506



OCT 2 1974

Harry A. Olson, Jr.
Senior Vice President

IN REPLY REFER TO:

Helen R. LeCraver
Director - Equal Employment
Opportunity
American Express Company
Executive Offices
65 Broadway
New York, New York 10006

Dear Mr. Olson and
Ms. LeCraver:

Your letters of October 1 and 8, 1974, to John H. Powell, Jr., Chairman of the Equal Employment Opportunity Commission have been referred to me for reply.

Pursuant to Commission procedures, jurisdiction in other divisions has terminated and, the two charges mentioned in your letters were forwarded to the Office of General Counsel, Philadelphia Regional Litigation Center for review and recommendation. The Litigation Center reviewed the charges and recommended that I present the case to the Commission for authorization to litigate. Authorization was granted.

When the authorization to litigate was transmitted to Philadelphia Regional Litigation Center, the Regional Attorney was instructed to institute pre-suit proceedings. Pre-suit provides you with an opportunity to voluntarily resolve the matter through a consent decree. That opportunity is still open to you. However a third opportunity to conciliate within the meaning of the regulations of this Commission is inappropriate now that litigation has been authorized.

Please be advised that the Regional Attorney is prepared to file as soon as the pre-suit settlement negotiations break down, or settlement is reached.

Sincerely,

William A. Carey

William A. Carey
General Counsel

cc: Dona Kahn
Judith Harris

AMERICAN EXPRESS

AMERICAN EXPRESS COMPANY, GENERAL COUNSEL'S OFFICE, 65 BROADWAY, NEW YORK, N. Y. 10006

CERTIFIED REGISTERED MAIL

January 20, 1975

Judith Harris, Esq.
Assistant Regional Attorney
Equal Employment Opportunity Commission
127 North 4th Street
Philadelphia, PENN. 19106

Dear Judy:

Re: EEOC v AMERICAN EXPRESS COMPANY

Enclosed is our final redraft of the Consent Decree taking into account the changes we discussed during our last telephone conversation. I am sending you three copies with Harry Olson's original signature. I expect that the original will be filed with the Court, one retained for your files and one with original signatures of the EEOC returned to us.

We expect that the Court will approve the attached document within a short period of time so that we will have some lead time before the effective date of April 1. We are of course working on the development of procedures to assure compliance however finalization of these procedures must await conclusion of the matter; therefore, we would appreciate your keeping us advised of every milestone along the way.

Sincerely yours,

Rita Berkowitz
Counsel

RB:nmw

enclosures

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

AMERICAN EXPRESS COMPANY,
A New York Corporation,

Defendant.

CIVIL ACTION NO.

AGREEMENT

The Equal Employment Opportunity Commission, an agency of the United States, (hereinafter the "Commission"), commenced this action, Civil Action No. _____, in the United States District Court for the Southern District of New York on _____,

alleging discrimination by American Express Company, against Black American employees and prospective employees because of their race and national origin and against female employees because of their sex in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (hereinafter "Title VII"). The Commission alleged in its complaint that the Defendant Company had engaged in and was engaging in these practices at its New York, New York and Washington, D.C. facilities.

In order to avoid the expense of litigation the Commission and the Defendant Company hereby agree to the following:

This Court has jurisdiction over the parties to this action and the subject matter thereof.

1. Neither the negotiation nor the execution of this Agreement shall constitute or operate as an acknowledgment or admission of any kind by American Express Company, that it, its officers, agents, or employees have violated or have not been in compliance with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e et seq., (hereinafter "Title VII").

2. It is expressly understood and agreed that the hiring and recruitment provisions of this Agreement shall apply to filling vacancies in the EEO-1 categories of Officials and Managers and Professionals at 67 Broad Street, 61 Broadway, 65 Broadway, 770 Broadway, New York, New York, 622 14th Street, N.W., and 1015 18th Street, N.W., Washington, D.C. The discharge for absenteeism provision applies to the Card Division facility at 770 Broadway. All other provisions apply to the New York, New York and Washington, D.C. facilities of American Express Company.

3. American Express Company agrees that it will not fail or refuse to hire or discharge any individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin in violation of Title VII in any manner covered by this Agreement.

RECORDKEEPING AND REPORTING REQUIREMENTS

4. American Express Company agrees to furnish to the Commission semi-annual reports which shall be entitled "American Express Company's Semi-Annual Progress Report", and shall contain

all the information and in the form as in the schedules included in Exhibit A attached hereto. The first such semi-annual report shall be submitted to the Commission within 30 days following June 30, 1975 and shall cover the period of the second quarter of 1975. Subsequent reports shall be submitted for half year periods up to and including December 31, 1976 and the first quarter of 1977.

5. Documents on which said semi-annual reports are based shall be maintained by the Company for at least six months after each report is filed with the Commission. The Commission shall have the right, upon 10 days notice to the Company, to review and inspect such documents and to copy those which the Commission deems essential. American Express Company reserves the right to object to a Commission request to copy such documents when the Company believes such copying will invade the privacy of an individual or when such copying would disclose confidential business information.

DEFINITIONS

6. (a) The term "vacancy", as used herein, shall include all openings to be filled in the EEO-1 categories of Officials and Managers and Professionals caused by the promotion, death, resignation or discharge of an incumbent or by an increase in operations or business where additional employees are required.

(b) The term "minorities", as used herein, shall include all Black and Spanish Surnamed American persons.

RECRUITMENT

7. American Express Company agrees to undertake a recruitment program as described in this Agreement at each establishment

listed in Exhibit B designed to produce a continuous flow of minority applicants for positions in the EEO-1 categories of Officials and Managers and Professionals.

8. An agreed list of organizations entitled "List of Minority Organizations" which the parties believe can be utilized as sources of recruitment for employment of minorities is attached to this Agreement as Exhibit C. This list may be modified from time to time by American Express Company upon notice to the Commission. Upon the execution of this Agreement, American Express Company agrees to submit to these organizations an agreed "Minority Job Recruitment Notification Letter" designed to advise such organizations of American Express Company's desire to employ qualified minorities. Such letter shall contain affirmation by American Express Company of its adherence to the principles of equal employment opportunity and shall be forwarded within 30 days after the effective date of this Agreement by American Express Company to each of the organizations on the "List of Minority Organizations". Proof of mailing these letters shall be presented to the Commission within 30 days of the mailing thereof. Use of this agreed list of recruitment contacts shall not bar American Express Company from establishing and maintaining contact with other recruitment sources.

9. If a position becomes available in the EEO-1 categories of Officials and Managers and Professionals at 67 Broad Street, 61 Broadway, 65 Broadway, 770 Broadway in New York City, New York or 622 14th Street, N.W. and 1015 18th Street, N.W., Washington, D.C. and there is no candidate available within the Company's personnel complement or appropriate Affirmative

Action File and American Express Company must search external sources for candidates, American Express Company agrees to notify such of the referral sources listed in Exhibit C of this Agreement as it deems appropriate. If practical, notification will be given by mail. Records of all such notifications, whether by letter or telephone, will be maintained by American Express Company.

10. American Express Company agrees to identify itself as an equal opportunity employer in its recruitment advertising. American Express Company further agrees to direct that its newspaper recruitment advertising be placed in the column which combines male and female advertising in the classified section of the newspaper. When no such combined column exists, American Express Company agrees to direct that the advertisement be placed in both male and female columns simultaneously. American Express Company agrees to maintain appropriate records with respect to its advertising. Such records will include copies of all newspaper recruitment advertising placed by American Express Company during the duration of this Agreement.

HIRING

11. Processing of Applications: All known minority persons applying for employment with American Express Company will be requested to file an employment application regardless of whether a job vacancy exists. For the purposes of this Agreement, resumes shall be included in the definition of employment applications. These applications for employment will be promptly reviewed by American Express Company and the Company will notify the applicant as soon as possible as to their disposition. Records will be maintained as to their disposition.

12. American Express Company recognizes that the civilian labor force for the SMSA's of New York City, New York and Washington, D.C. for Officials and Managers and Professionals, are approximately 7.0% minority and 11.4% minority respectively. To the extent that minority candidates are available and without requiring preference of less qualified persons over more qualified persons, in filling vacancies in its EEO-1 categories of Officials and Managers and Professionals in New York City, New York and Washington, D.C. American Express Company agrees to hire in accordance with procedures established under this Agreement.

AFFIRMATIVE ACTION FILE

13. (a) Applications of minorities applying for employment in the EEO-1 categories of Officials and Managers and Professionals ^{who} ^{neither} which are ~~not~~ hired nor rejected and applications of minorities not specifying a job category or job applied for ^{who} which are neither hired nor rejected for such positions, shall be placed in an Affirmative Action File at the appropriate location listed in Exhibit B. At the time the application is placed in the file, American Express Company shall notify the applicant and advise as to the duration of the period in which the application will remain on file;

(b) When a job vacancy occurs in the EEO-1 categories of Officials and Managers and Professionals for which no candidate is then presently available within the Company's personnel complement, American Express Company will review the Affirmative Action File at the appropriate location listed in Exhibit B to determine if appropriate applicants are available from the minorities listed therein. At the time, if an applicant

is still considered qualified, but not hired, American Express Company shall note on the file the date of each review and the reason for the rejection;

(c) The maintenance and use of the Affirmative Action Files do not require American Express Company to exclude from consideration other qualified persons, nor do they imply a quota system for the hiring of any members of a racial or ethnic group, or require preference of less qualified persons over more qualified persons;

(d) Applications will remain in the Affirmative Action Files for six (6) months. Applications of those applicants who do not respond to any inquiry by American Express Company may be removed without regard to the length of time they have been in the Affirmative Action Files;

(e) American Express Company agrees to maintain such records as are necessary and appropriate to the implementation and documentation of the foregoing provisions and as are required by the Commission under the Rules and Regulations of the Equal Employment Opportunity Commission Title 29 CFR, Chapter XIV, Section 1602.14. The records shall include the following information: (1) all completed applications which are less than six (6) months old; (2) all appropriate records with respect to the disposition of the applications; (3) the number of applications transferred to the Affirmative Action Files; (4) the dates of review of individuals' applications in the Affirmative Action Files and actions taken pursuant thereto; and (5) any correspondence to applicants pursuant to the maintenance of the Affirmative Action Files.

PROMOTIONS

14. American Express Company agrees to inform its minority employees of training programs and educational opportunities which may be available in order to improve their opportunities for promotion.

DISCHARGE FOR ABSENTEEISM

15. (a) American Express Company agrees that in every case in which a Black employee at American Express Company's Card Division facility at 770 Broadway, New York, New York is considered for discharge for reasons of absenteeism, the employee will not be discharged without the concurrence of the senior personnel official in charge of the Personnel Department at that facility, or his designee that fair and equitable warnings have been given.

In the event the Commission believes, and the Court herein finds, that the absence record of any Black employee so terminated, the reasons for his or her absence, his or her work performance, the importance of attendance in the job held or other factors considered by the Company, as compared with such factors in the case of other employees terminated at that facility for absenteeism, show that such Black employee has been unjustly terminated, the Court shall, on application of the Commission, grant an order in this action directing appropriate remedial action which may include, but is not limited to, reinstatement, with or without back pay.

(b) Appropriate records of the employee and analysis of the records of the other employees in the work unit and the discharge documents will be transferred to the Director - Equal Employment Opportunity for review.

(c) As part of "American Express Company's Semi-Annual Progress Report", American Express Company will report in accordance with Schedule 1 of Exhibit A, all Black employees terminated at American Express Company's Card Division at 770 Broadway, New York, New York for reasons of absenteeism.

HIGH SCHOOL DIPLOMA

16. American Express Company agrees to continue not to maintain a high school diploma as an employment criterion for the position of Travel Clerk I.

ARRESTS AND GARNISHMENTS

17. (a) American Express Company agrees that it will not inquire into whether a minority applicant for employment has ever been arrested, ^{and} *nor will American Express record info for purposes of discriminating in its employment practices in hiring, promotion, discharge, absence a business necessity.*

(b) Should the Company obtain information that a minority applicant for employment or a minority employee has ever been arrested and for that reason, decide to reject such applicant or to deny such employee a promotion or transfer or should the Company reject a minority applicant for employment or discipline, or deny a promotion or transfer to a minority employee for the reason that such applicant or employee has been subjected to one or more garnishments, the Company will, as part of "American Express Company's Semi-Annual Progress Report", report such actions to the Commission.

(c) In the event that the Commission believes, and the Court herein finds, that any such action was not justified by business necessity, the Court shall, on application of the Commission, grant an order in this action directing appropriate remedial action which may include, but is not limited to, reinstatement with or without back pay.

MATERNITY LEAVE

18 (a) American Express Company agrees to permit employees to be absent from work if necessitated by the pregnancy of the employee for the same period of time as the Company permits employees to be absent from work if necessitated by sickness or accident of the employee under the Company's Salary Continuation Plan. Such leave shall not obligate the Company to cover the employee in accordance with its Salary Continuation Plan, except as provided in sections 18(b) and 18(c) below.

NORMAL PREGNANCY

(b) In the event that a decision of the Supreme Court of the United States provides that a failure to treat disabilities arising from a normal pregnancy under any health or temporary disability insurance or sick leave plan ^{comparable} to the Company's Salary Continuation Plan constitutes a violation of Title VII, the Company agrees to provide the benefits available for other disabilities to such of its employees who have taken maternity leave from the effective date of this

Agreement. The Company agrees to maintain a record of all employees who during the effect of this Agreement take maternity leave for normal pregnancy.

ABNORMAL PREGNANCY AND COMPLICATIONS ARISING FROM PREGNANCY

(c) This provision is intended to cover such situations as ectopic pregnancies, tubular pregnancies, pregnancies involving threat to the life of the mother or child, miscarriages and therapeutic abortions, and any medical complications arising prior to delivery, during delivery or after delivery whether or not pregnancy is normal or abnormal.

The Company agrees that the Company's Salary Continuation Plan will be applicable in the event of any of the above situations upon proof of the above medical situations.

This is not intended to cover the normal disability period of pregnancy where an employee is unable to work during the final portion of the pregnancy and delivery or post delivery period.

MISCELLANEOUS

19. No employee shall be deprived of any lawful remedy which he or she may have on account of his or her participation in:

- (a) the investigation in connection with this lawsuit;
- (b) any private lawsuit arising out of Title VII;

(c) any charge of discrimination filed with the Equal Employment Opportunity Commission; or

(d) any other effort to achieve equal employment opportunity.

20. Nothing in this Agreement shall prevent American Express Company from engaging in any other affirmative action plan, program, or training to increase the minority representation of employees in its work force and to convey to its current employees its commitment to the same.

21. (a) In the event at any time prior to the termination of this Agreement, the Commission determines that there has been a violation by American Express Company of the terms of this Agreement, it shall notify American Express Company in writing in detail of the alleged violation, and American Express Company shall be given thirty (30) days from the receipt of the Commission's notice to refute or to correct the violation before the Commission shall institute any legal proceedings in connection with the alleged violations.

(b) Should the Commission and the Company fail to resolve any alleged violation of this Decree and Agreement as set forth in the manner provided in paragraph 21(a) either party may move the Court to resolve such dispute.

22. In full and complete settlement of all claims against American Express Company arising out of Commission Case No. YDC3-275, the Charging Party in that case, Mary A. Reese, agrees to accept from the American Express Company, the gross sum of \$2,176.00, less applicable deductions.

23. (a) The Commission accepts this Agreement as a fair and equitable settlement of claims raised by the Complaint in

this action. The Commission will neither commence nor intervene in any suit against the Company on any act or practice covered by the Agreement and occurring prior to or during the term of this Agreement. The Commission and the Company agree that all charges filed against the Company at its New York, New York and Washington, D.C. facilities after the execution of this Agreement that raise issues covered by the Complaint or Agreement shall be resolved as set forth in the remainder of this paragraph. The Commission shall forward copies of such charges to the Office of the General Counsel of American Express Company for attempted resolution. Should the Company and the Commission fail to resolve such charges within a mutually acceptable period of time, which shall be at least ninety (90) days, either party may move the Court for an appropriate order to determine whether the Company is in compliance with the Agreement. In the event of a dispute between the parties as to whether the charges are covered by the Agreement and are to be resolved in accordance with the procedures set forth in this paragraph, either party may move the Court for a resolution. Any charges which the Court decides are not covered by the Agreement, or those charges raising issues covered by the Complaint but not covered by the Agreement which the Commission and the Company are unable to resolve shall be processed in accordance with Title VII and the procedures provided for in the Commission's regulations. Any charges filed with the Commission against the Company raising issues not covered by the Complaint or Agreement shall be processed in accordance with Title VII and Commission regulations.

Nothing in this section shall be construed as limiting the right of an individual Charging Party from seeking relief under Section 706 of Title VII.

(b) Nothing contained herein is intended in settlement of the individual claim for relief in the case of Clarence Ferrell v. American Express Company, United States District Court for the Eastern District of New York, Civil Action No. 73-1419, currently in progress.

24. This Agreement shall remain in effect from April 1, 1975 up to and including March 31, 1977.

25. At any time prior to March 31, 1977 the parties may stipulate to a modification or dissolution of this Agreement.

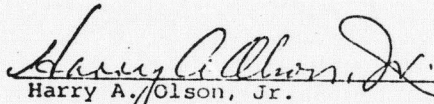
26. It is hereby agreed that this Agreement shall be filed in Civil Action No. _____ in the United States District Court for the Southern District of New York.

DATED: _____

United States District Judge

For American Express Company

For the Equal Employment
Opportunity Commission


Harry A. Olson, Jr.

Senior Vice President

Schedule 1 of A

AMERICAN EXPRESS COMPANY
770 BROADWAY
SCHEDULE OF TERMINATIONS FOR ABSENCE

EEO - 1 CATEGORY	WORKFORCE		TERMINATIONS		
	% BLACK	BLACKS	OTHERS	TOTAL	% BLACK OF TOTAL
OFFICIALS & MANAGERS					
PROFESSIONALS					
TECHNICIANS					
SALES WORKERS					
OFFICE & CLERICAL					
OPERATIVES					
LABORERS					
SERVICE WORKERS					

Schedule 2 of A

AMERICAN EXPRESS COMPANY EMPLOYMENT FORCE

AS OF BEGINNING AND END OF HALF/QUARTER 19

STREET ADDRESS: _____

	TOTAL EMPLOYEES		MINORITY GROUP EMPLOYEES			
EEO-1 JOB CATEGORY	TOTAL EMPLOYEES INCLUDING MINORITIES		BLACK		SPANISH SURNAMED AMERICANS	
OFFICIAL & MANAGERS	Beginning	End	Beginning	End	Beginning	End
1. 15,000 & above						
2. Below 15,000						
PROFESSIONALS						

EXHIBIT BLOCATIONS IN NEW YORK, NEW YORK AT WHICH
EMPLOYMENT FUNCTION IS PERFORMEDNEW YORK, NEW YORK

770 BROADWAY

67 BROAD STREET

65 BROADWAY

61 BROADWAY

EXHIBIT C

Ran Associates
2090 Seventh Avenue
New York, New York 10027
(212) 866-7000

Arch S. Whitehead
Management Consultants
626 Riverside Drive
New York, New York
(212) 679-2905

Joseph A. Davis Consultants, Inc.
104 E. 40th Street - Suite 101
New York, New York 10016
(212) 682-3820

Fields Freeman & Associates
51 East 42nd Street
New York, New York
(212) 697-7333

Boone-Young & Associates, Inc.
551 Fifth Avenue
New York, New York
(212) 661-8044

Richard Clarke Associates
1270 Sixth Avenue
New York, New York
(212) 581-3400

Bruce Daniels Associates
10 Hill Street - Suite 2A
Hallmark House
Newark, New Jersey
(201) 624-5855

Maps - Minority Advancement Personnel Services, Inc.
450 7th Avenue
New York, New York
(212) 868-2260

National Urban League
Placement Division
477 Madison Avenue
New York, New York
(212) 826-6340



EQUAL EMPLOYMENT OPPOR. UNITY COMMISSION
PHILADELPHIA REGIONAL LITIGATION CENTER
127 N. 4TH STREET - SUITE 200
PHILADELPHIA, PENNSYLVANIA 19106

May 13, 1975

Rita Berkowitz, Esquire
American Express Company
65 Broadway
New York, New York 10006

Dear Rita:

This letter is to set forth for you in writing, as I indicated I would in our conversation of May 9, 1975, the aspects of the Agreement which our General Counsel's Office finds unacceptable as well as to indicate what an acceptable resolution of the various issues would entail.

Paragraph 12 of the Agreement is unacceptable because it fails to firmly impose upon the Company a requirement that it bring the minority representation in its work force in line with the SMSA statistics for the respective EEO categories of Officials and Managers and Professionals. This could be done in several ways. For example, a specific time limit within which the Company would have to meet the relevant population figures could be set or a hire ratio for the filling of jobs within these categories could be established. An example of a hire ratio is that at least 2 out of every 5 persons hired in either of these two categories would have to be minority persons until such time as the percentage of minorities in these categories equalled their percentage in the categories for the respective SMSA's.

Also with respect to the filling of vacancies in these categories schedule 2 of Exhibit "A" would have to be more finely detailed in terms of salary scale. In that way, we would be able to tell whether minorities are being hired at all levels within the EEO categories of Officials and Managers and Professionals rather than just into the lower levels of these categories.

Page 2

As I indicated to you on Friday, the use by the Company of arrest records and garnishment is totally unacceptable, and accordingly, a provision would have to be included in the Agreement clearly prohibiting the use of either.

Additionally, we must exhaust the possibility of back pay for past discrimination in hiring and placement of blacks. This may very well require reconstruction by the Company of past records to see if we can identify blacks who have been adversely affected by discriminatory hiring, promotion, or job classification policies of the Company. Minimally the Company would have to provide us with a list of current and former employees from 1965 to the present by name, address, social security number, race, job classification, job title, salary, and name of facility where each is employed. We would also need to know the jobs held by these employees since 1965, the dates they were held, and the rate of pay for each job held.

Provisions in the Agreement concerning pregnancy will have to provide, in addition to prospective payment for complications arising from or contributed to by pregnancy, for the compensation of persons who have been disabled because of these conditions in the past. Such payment would have to be retroactive at least to the date of our Guidelines. In addition, we will have to try to identify persons who were out of work and disabled due to normal pregnancy from the date of our Guidelines to the present. Naturally, those persons will have to be compensated. Though actual payment to these persons may be postponed, payment cannot hinge on a Supreme Court decision on the merits of an unidentified case. We could include a provision that such payment would await a final disposition of a case currently extant such as Wetzel v. Liberty Mutual, Gilbert v. G.E., or the CWA case of the second circuit. We would have to define "final disposition" referred to in paragraph 18 of the Agreement in such a way as to include either the denial of certiorari by the Supreme Court in one of those cases or the failure to appeal within the appropriate time by the parties.

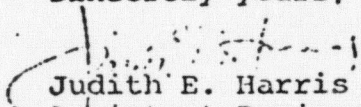
There were some problems in terms of the Agreement's language that have to be clarified. Paragraph 23 would have to indicate

Page 3

more clearly that this Agreement is in no way intended to affect the rights of private Charging Parties to institute suit. Though paragraph 19 of this Agreement tends to indicate that, it should be further clarified in paragraph 23. Also paragraph 15 concerning discharges for absenteeism should be clarified to indicate that unfair discharges of minorities are absolutely forbidden. In other words, that the Company cannot discharge a black when a comparable white would have been discharged if fair and equitable warnings have not been given.

I realize that you will have to confer with your General Counsel and your Board Chairman prior to letting me know whether the Company is willing to agree to the changes indicated above. I am also aware of the fact that since your General Counsel is and will be out of the country until May 27, that will be the earliest date when you can meet with him. I will, as you indicated in our conversation on Friday, expect to hear from you no later than Tuesday, June 3, 1975 as to whether we can settle on the outline set forth above or whether we will have to proceed to litigate this matter.

Sincerely yours,


Judith E. Harris
Assistant Regional Attorney

AMERICAN EXPRESS

AMERICAN EXPRESS COMPANY, GENERAL COUNSEL'S OFFICE, 65 BROADWAY, NEW YORK, N. Y. 10006

June 10, 1975

Judith E. Harris, Esq.
Assistant Regional Attorney
Philadelphia Regional Litigation Center
127 North 4th Street
Philadelphia, PENN. 19106

Re: EEOC V. AMERICAN EXPRESS COMPANY

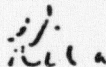
Dear Judy:

Enclosed you will find an original and two copies of the amended Consent Decree. Both copies contain the original signature of Harry A. Olson. It is Mort Maneker's and my opinion that the attached document takes into account the areas we discussed at our last meeting.

I am also enclosing a copy which is marked in red indicating the changes we have made from the original signed Agreement. This should facilitate your review.

If you have any questions please give me a call.

Sincerely,



Rita Berkowitz
Counsel - Personnel

RB:maw

enclosures

cc: M. Maneker, Esq.

P.S. - I presume that the language of the agreed upon Press Release was not objectionable to Mr. Robinson and therefore still stands.

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY	)	
COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
AMERICAN EXPRESS COMPANY,	)	CIVIL ACTION NO.
A New York Corporation,	)	
	)	
Defendant.	)	
	)	
	)	

AGREEMENT

The Equal Employment Opportunity Commission, an agency of the United States, (hereinafter the "Commission"), commenced this action, Civil Action No. _____, in the United States District Court for the Southern District of New York on _____, alleging discrimination by American Express Company, against Black American employees and prospective employees because of their race and national origin and against female employees because of their sex in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e. et seq., (hereinafter "Title VII"). The Commission alleged in its complaint that the Defendant Company had engaged in and was engaging in these practices at its New York, New York and Washington, D.C. facilities.

In order to avoid the expense of litigation the Commission and the Defendant Company hereby agree to the following:

This Court has jurisdiction over the parties to this action and the subject matter thereof.

1. Neither the negotiation nor the execution of this Agreement shall constitute or operate as an acknowledgment or admission of any kind by American Express Company, that it, its officers, agents, or employees have violated or have not been in compliance with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e. et seq., (hereinafter "Title VII").

2. It is expressly understood and agreed that the hiring and recruitment provisions of this Agreement shall apply to filling vacancies in the EEO-1 categories of Officials and Managers and Professionals in the Card, Travel and Travelers Cheque Divisions in New York City and Washington, D.C. and Corporate Staff Offices in those cities. The discharge for absenteeism provisions applies to Card Division facilities in New York City. All other provisions apply to the New York City and Washington, D.C. facilities of American Express Company.

3. American Express Company agrees that it will not fail or refuse to hire or discharge any individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin in violation of Title VII in any manner covered by this Agreement.

RECORDKEEPING AND REPORTING REQUIREMENTS

4. American Express Company agrees to furnish to the Commission semi-annual reports which shall be entitled "American Express Company's Semi-Annual Progress Report", and shall contain all the information and in the form as in the schedules included in Exhibit A attached hereto. The

first such semi-annual report shall be submitted to the Commission within 30 days following December 31, 1975 and shall cover the period of the second half of 1975, beginning July 15, 1975. Subsequent reports shall be submitted for half year periods up to and including December 31, 1976 and the first half of 1977.

5. Documents on which said semi-annual reports are based shall be maintained by the Company for at least six months after each report is filed with the Commission. The Commission shall have the right, upon 10 days notice to the Company, to review and inspect such documents and to copy those which the Commission deems essential. American Express Company reserves the right to object to a Commission request to copy such documents when the Company believes such copying will invade the privacy of an individual or when such copying would disclose confidential business information.

DEFINITIONS

6. (a) The term "vacancy", as used herein, shall include all openings to be filled in the EEO-1 categories of Officials and Managers and Professionals caused by the promotion, death, resignation or discharge of an incumbent or by an increase in operations or business where additional employees are required.

(b) The term "minorities", as used herein, shall include all Black and Spanish Surnamed American persons.

RECRUITMENT

7. American Express Company agrees to undertake the recruitment program as described in this Agreement designed to produce a continuous flow of minority applicants for

positions in the EEO-1 categories of Officials and Managers and Professionals.

8. An agreed list of organizations entitled "List of Minority Organizations" which the parties believe can be utilized as sources of recruitment for employment of minorities is attached to this Agreement as Exhibit B. This list may be modified from time to time by American Express Company upon notice to the Commission. Upon the execution of this Agreement, American Express Company agrees to submit to these organizations an agreed "Minority Job Recruitment Notification Letter" designed to advise such organizations of American Express Company's desire to employ qualified minorities. Such letter shall contain affirmation by American Express Company of its adherence to the principles of equal employment opportunity and shall be forwarded within 30 days after the effective date of this Agreement by American Express Company to each of the organizations on the "List of Minority Organizations". Proof of mailing these letters shall be presented to the Commission within 30 days of the mailing thereof. Use of this agreed list of recruitment contacts shall not bar American Express Company from establishing and maintaining contact with other recruitment sources.

9. American Express Company agrees to identify itself as an equal opportunity employer in its recruitment advertising. American Express Company further agrees to direct that its newspaper recruitment advertising be placed in the column which combines male and female advertising in the classified section of the newspaper. When no such combined column exists, American Express Company agrees to direct that the advertisement be placed in both male and female columns simultaneously. American Express Company agrees to maintain

appropriate records with respect to its advertising. Such records will include copies of all newspaper recruitment advertising placed by American Express Company during the duration of this Agreement.

HIRING

10. American Express Company recognizes that the civilian labor force for the Standard Metropolitan Statistical Areas of New York City and Washington, D.C. for the EEO-1 categories of Officials and Managers and Professionals in the aggregate, are approximately 7.0% minority and 11.4% minority, respectively. If any semi-annual report filed hereunder shows that the percentage of minorities in such categories, in the aggregate, are, in either of such Areas, below such percentages by 2% or more (e.g. 5% or 9.4%) or, in the case of Washington, D.C., by two job positions or more whichever is greater, and the percentage of minorities continues, for more than 90 days, to remain below such percentages by such amounts, American Express Company shall recruit and hire employees in such categories for such Area, in accordance with the procedures set forth in paragraphs 11, 12 and 13 to the extent that minority candidates are available and without requiring preference of less qualified persons over more qualified persons. Such obligation shall continue, during the term of this Agreement, until the percentage of minorities in such categories in the aggregate reaches the percentage set forth above for the Area involved. The recruiting and hiring efforts of American Express Company shall not be limited to lower salaried jobs.

11. If a position becomes available in such categories in the Area involved and there is no candidate available within the Company's personnel complement or the Affirmative Action File of the Division or Corporate Staff in which the position becomes available and American Express Company must search external sources for candidates, American Express Company agrees to notify such of the referral sources listed in Exhibit B of this Agreement as it deems appropriate. If practical, notification will be given by mail. Records of all such notifications, whether by letter or telephone, will be maintained by American Express Company.

12. Processing of Applications: All known minority persons applying for employment with American Express Company will be requested to file an employment application regardless of whether a job vacancy exists. For the purposes of this Agreement, resumes shall be included in the definition of employment applications. These applications for employment will be promptly reviewed by American Express Company and the Company will notify the applicant as soon as possible as to their disposition. Records will be maintained as to their disposition.

13. (a) Applications of minorities applying for employment in the EEO-1 categories of Officials and Managers and Professionals who are neither hired nor rejected and applications of minorities not specifying a job category or job applied for who are neither accepted nor rejected for such positions shall be placed in the Affirmative Action File for the Division or Corporate Staff at which application is made. At the time the application is placed in the file, American Express Company shall notify the applicant and advise as to the duration of the period in which the application will remain on file;

(b) When a job vacancy occurs in the EEO-1 categories of Officials and Managers and Professionals for which no candidate is then presently available within the Company's personnel complement, American Express Company will review the Affirmative Action File of the Division or Corporate Staff in which the vacancy occurs to determine if appropriate applicants are available from the minorities listed therein. At the time, if an applicant is still considered qualified, but not hired, American Express Company shall note on the file the date of each review and the reason for the rejection;

(c) The maintenance and use of the Affirmative Action Files do not require American Express Company to exclude from consideration other qualified persons, nor do they imply a quota system for the hiring of any members of a racial or ethnic group, or require preference of less qualified persons over more qualified persons;

(d) Applications will remain in the Affirmative Action File for six (6) months. Applications of those applicants who do not respond to any inquiry by American Express Company may be removed without regard to the length of time they have been in the Affirmative Action Files;

(e) American Express Company agrees to maintain such records as are necessary and appropriate to the implementation and documentation of the foregoing provisions. The records shall include the following information: (1) all completed applications which are less than six (6) months old; (2) all appropriate records with respect to the disposition of the applications; (3) the number of applications transferred to the Affirmative Action Files; (4) the dates of review of individuals' applications in the Affirmative Action Files and actions taken pursuant to the maintenance of the Affirmative Action Files.

PROMOTIONS

14. American Express Company agrees to inform its minority employees of training programs and educational opportunities which may be available in order to improve their opportunities for promotion.

DISCHARGE FOR ABSENTEEISM

15. (a) American Express Company agrees that in every case in which a Black employee at American Express Company's Card Division facilities in New York City is considered for discharge for reasons of absenteeism, the employee will not be discharged without the concurrence of the senior personnel official in charge of the Personnel Department at that facility, or his designee that fair and equitable warnings have been given and the factors set forth below will be considered in determining whether such employee shall be discharged.

In the event the Commission believes, and the Court herein finds, that the absence record of any Black employee so terminated, the reasons for his or her absence, his or her work performance, the importance of attendance in the job held or other factors considered by the Company, as compared with such factors in the case of other employees terminated at that facility for absenteeism, show that such Black employee has been unjustly terminated, the Court shall, on application of the Commission, grant an order in this action directing appropriate remedial action which may include, but is not limited to, reinstatement, with or without back pay.

(b) Appropriate records of the employee and analysis of the records of the other employees in the work unit and the discharge documents will be transferred to the

Director - Equal Employment Opportunity for review.

(c) As part of "American Express Company's Semi-Annual Progress Report", American Express Company will report in accordance with Schedule 1 of Exhibit A, all Black employees terminated at American Express Company's Card Division facilities in New York City for reasons of absenteeism.

HIGH SCHOOL DIPLOMA

16. American Express Company agrees to continue not to maintain a high school diploma as a pre-employment criterion for the position of Travel Clerk 1.

ARRESTS AND GARNISHMENTS

17. (a) American Express Company agrees that it will not inquire into whether a minority applicant for employment has ever been arrested.

(b) Should the Company obtain information that a minority applicant for employment or a minority employee has ever been arrested and for that reason, decide to reject such applicant or to deny a promotion or transfer to a minority employee for the reason that such applicant or employee has been subjected to one or more garnishments, the Company will, as part of "American Express Company's Semi-Annual Progress Report", report such actions to the Commission.

(c) In the event that the Commission believes, and the Court herein finds, that any such action was not justified by business necessity, the Court shall, on application of the Commission, grant an order in this action directing appropriate remedial action which may include, but is not limited to, reinstatement with or without back pay.

In any such proceeding hereunder, American Express Company shall have the burden of proving such business necessity.

MATERNITY LEAVE

18. (a) American Express Company agrees to permit employees to be absent from work if necessitated by the pregnancy of the employee for the same period of time as the Company permits employees to be absent from work if necessitated by sickness or accident of the employee under the Company's Salary Continuation Plan. Such leave shall not obligate the Company to cover the employee in accordance with its Salary Continuation Plan, except as provided in sections 18(b) and 18(c) below.

NORMAL PREGNANCY

(b) In the event that the decision of the Supreme Court of the United States in the case of Wetzel v. Liberty Mutual Insurance Company, 511 F2d 199 (3rd Cir. 1975) certiorari granted on May 27, 1975 or in any other case provides that a failure to treat disabilities arising from a normal pregnancy under any health or temporary disability insurance or sick leave plan comparable to the Company's Salary Continuation Plan constitutes a violation of Title VII, the Company agrees to provide the benefits available for other disabilities to such of its employees who have taken maternity leave on or after April 1, 1975. The Company agrees to maintain a record of all employees who have taken maternity leave for normal pregnancy on or after April 1, 1975.

ABNORMAL PREGNANCY AND COMPLICATIONS ARISING FROM PREGNANCY

(c) This provision is intended to cover such situations as ectopic pregnancies, tubular pregnancies, pregnancies involving threat to the life of the mother or child, miscarriages and therapeutic abortions, and any medical complications arising prior to delivery, during delivery or after delivery whether or not pregnancy is normal or abnormal.

The Company agrees that the Company's Salary Continuation Plan will be applicable in the event of any of the above situations upon proof of the above medical situations.

This is not intended to cover the normal disability period of pregnancy where an employee is unable to work during the final portion of the pregnancy and delivery or post delivery period.

MISCELLANEOUS

19. No employee shall be deprived of any lawful remedy which he or she may have on account of his or her participation in:

- (a) the investigation in connection with this lawsuit:
- (b) any private lawsuit arising out of Title VII;
- (c) any charge of discrimination filed with the Equal Employment Opportunity Commission; or
- (d) any other effort to achieve equal employment opportunity.

20. Nothing in this Agreement shall prevent American Express Company from engaging in any other affirmative action plan, program, or training to increase the minority

representation of employees in its work force and to convey to its current employees its commitment to the same.

21. (a) In the event at any time prior to the termination of this Agreement, the Commission determines that there has been a violation by American Express Company of the terms of this Agreement, it shall notify American Express Company in writing in detail of the alleged violation, and American Express Company shall be given thirty (30) days from the receipt of the Commission's notice to refute or to correct the violation before the Commission shall institute any legal proceedings in connection with the alleged violations.

(b) Should the Commission and the Company fail to resolve any alleged violation of this Decree and Agreement as set forth in the manner provided in paragraph 21(a) either party may move the Court to resolve such dispute.

22. In full and complete settlement of all claims against American Express Company arising out of Commission Case No. YDC3-275, the Charging Party in that case, Mary A. Reese, agrees to accept from the American Express Company, the gross sum of \$2,176.00, less applicable deductions.

23. The Commission accepts this Agreement as a fair and equitable settlement of claims raised by the Complaint in this action. The Commission will neither commence nor intervene in any suit against the Company on any act or practice covered by the Agreement and occurring prior to or during the term of this Agreement. The Commission and the Company agree that all charges filed against the Company at its New York, New York and Washington, D.C. facilities after the execution of this Agreement that raise issues covered by the Complaint or Agreement shall be resolved as set forth in the remainder of this paragraph. The Commission shall

forward copies of such charges to the Office of the General Counsel of American Express Company for attempted resolution. Should the Company and the Commission fail to resolve such charges within a mutually acceptable period of time, which shall be at least ninety (90) days, either party may move the Court for an appropriate order to determine whether the Company is in compliance with the Agreement. In the event of a dispute between the parties as to whether the charges are covered by the Agreement and are to be resolved in accordance with the procedures set forth in this paragraph, either party may move the Court for a resolution. Any charges which the Court decides are not covered by the Agreement, or those charges raising issues covered by the Complaint but not covered by the Agreement which the Commission and the Company are unable to resolve shall be processed in accordance with Title VII and the procedures provided for in the Commission's regulations. Any charges filed with the Commission against the Company raising issues not covered by the Complaint or Agreement shall be processed in accordance with Title VII and Commission regulations.

— Nothing in this section shall be construed as limiting the right of an individual Charging Party from seeking relief under Section 706 of Title VII including, but not limited to, the right to sue in federal court.

24. This Agreement shall remain in effect from July 15, 1975 up to and including June 30, 1977.

25. At any time prior to June 30, 1977 the parties may stipulate to a modification or dissolution of this Agreement.

26. It is hereby agreed that this Agreement shall be
 filed in Civil Action No. _____ in the United States District
 Court for the Southern District of New York.

DATED: _____

 United States District Judge

For American Express Company

For the Equal Employment
 Opportunity Commission


 Harry A. Olson, Jr.
 Senior Vice President

 General Counsel

 WILLIAM L. ROBINSON
 Associate General Counsel

 DELORES WILSON
 Regional Attorney

 DONA KAHN
 Associate Regional Attorney

 JUDITH E. HARRIS
 Assistant Regional Attorney

Schedule 1 of A

AMERICAN EXPRESS COMPANY
770 BROADWAY
SCHEDULE OF TERMINATIONS FOR ABSENCE

EEO - 1 CATEGORY	WORKFORCE			TERMINATIONS	
	% BLACK	BLACKS	OTHERS	TOTAL	% BLACK OF TOTAL
OFFICIALS & MANAGERS					
PROFESSIONALS					
TECHNICIANS					
SALES WORKERS					
OFFICE & CLERICAL					
OPERATIVES					
LABORERS					
SERVICE WORKERS					

SCHEDULE 2 OF A

AMERICAN EXPRESS COMPANY EMPLOYMENT FORCE
AS OF BEGINNING AND END OF _____ HALF/QUARTER 197_

CITY: _____

OFFICIALS & MANAGERS & PROFESSIONALS	TOTAL EMPLOYEES		MINORITY GROUP EMPLOYEES			
	Total employees including minorities		Black		Spanish Surnamed Americans	
	beginning	end	beginning	end	beginning	end
Below \$10,000						
\$10,000 - \$14,999 ...						
\$15,000 - \$19,999 ...						
\$20,000 - \$24,999 ...						
\$25,000 - \$29,999 ...						
\$30,000 - \$34,999 ...						
\$35,000 - \$39,999 ...						
\$40,000 & Above						

EXHIBIT D

Ben Associates
2550 Broadway Avenue
New York, New York 10027
(212) 693-7559

Arch S. Whiteland
Management Consultants
626 Riverside Drive
New York, New York
(212) 679-2505

Joseph A. Davis Consultants, Inc.
104 E. 40th Street - Suite 101
New York, New York 10016
(212) 682-3520

Fields Freeman & Associates
51 East 62nd Street
New York, New York
(212) 697-7333

Boone-Young & Associates, Inc.
551 Fifth Avenue
New York, New York
(212) 661-6094

Richard Clarke Associates
1275 Sixth Avenue
New York, New York
(212) 681-3600

Bruce Daniels Associates
10 Hill Street - Suite 2A
Hillmark House
Newark, New Jersey
(201) 624-5055

Haga - Minority Advancement Personnel Services, Inc.
450 7th Avenue
New York, New York
(212) 688-2200

National Urban League
Placement Division
477 Madison Avenue
New York, New York
(212) 688-6549

BEST COPY AVAILABLE

Received 5/11/77
Ronald G Copeland

